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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

HONDA MOTOR CO., LTD.,
Petitioner,

v.

WALTER P. COONS,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF *

Pursuant to Rule 22.6 of this Court, petitioner submits this Supplemental Brief to call to this Court's attention the recent federal district court decision in *Cohn* v. *G. D. Searle & Co.*, No. 74-450 (D.N.J. December 7, 1984) (Debevoise J.). Both *Searle* and the case presented by this petition were remanded to the lower courts by this Court in 1982. *G.D. Searle & Co.* v. *Cohn*, 455 U.S. 404, 414 (1982); *Honda Motor Co., Ltd.* v. *Coons*, 455 U.S. 996 (1982). The district court's opinion grants Searle summary judgment on statute of limitations grounds, ruling that the New Jersey tolling statute violates the Commerce Clause and that the Commerce Clause ruling must be applied retroactively. The decision thus reaches

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*** Honda's Rule 28.1 statement appears at p. ii of its Petition for Certiorari.**

a result on the retroactivity question in direct conflict with the New Jersey Supreme Court's opinion in *Coons II*, review of which is sought here.[1]

THE IMPORTANCE OF *SEARLE* TO THE PRESENT PETITION

The district court's decision in *Searle* is important to the present petition in two respects. First, the decision recognizes that *Coons II* is wrong on the merits for reasons identical to those set out in the petition. Second, the decision shows that *Coons II* is in conflict not only with other state courts of last resort (Pet. at 10-12), but also with at least one federal district court in New Jersey. Thus, review by this Court is necessary.

1. *The Searle decision on the merits.* In *Searle*, the district court ruled first that the New Jersey Supreme Court correctly decided in *Coons I* that the New Jersey tolling statute violates the Commerce Clause. SA-7 - SA-8. The court refused, however, to follow the New Jersey Supreme Court's decision on retroactivity in *Coons II*. The court held that it was not bound by *Coons II*, since federal law must control the retroactivity of a federal constitutional decision, and since *Coons II* "did not even purport to apply federal law when deciding the retroactivity question." SA-7. See Pet. at 10-12; Petitioner's Reply Br. at 4-8. The court then concluded that, under federal law, retroactivity of its constitutional holding was mandated. SA-8.

In analyzing the retroactivity issue, the court noted, echoing the reasoning of the petition filed in this Court, that if its Commerce Clause ruling were only prospective, "this burden on commerce [would] perpetuate itself into

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[1] The district court's opinion in *Searle* is reprinted in the appendix to this Supplemental Brief. Pages in that appendix will be designated "SA" to differentiate them from pages in the separately bound appendix filed with Honda's petition.

the future" and thus "defeat[] the constitutional ruling striking down an impermissible burden on commerce." SA-8. Citing this Court's opinions in *New York* v. *Cathedral Academy*, 434 U.S. 125 (1977), *Lemon* v. *Kurtzman*, 411 U.S. 192 (1973) (*Lemon II*), and *United States* v. *U.S. Coin & Currency*, 401 U.S. 715 (1971), the court reasoned that a balancing test to determine retroactivity may not be appropriate in this type of case "where there is an immediate burden on commerce of an extensive and persuasive nature." SA-8 - SA-9. Pet. at 12-18; Petitioner's Reply Br. at 1-4.

The Court then ruled, again echoing the reasoning of the petition, that even if the balancing test set forth in *Chevron Oil Co.* v. *Huson*, 404 U.S. 97 (1971) and *United States* v. *Johnson*, 457 U.S. 537 (1982), were applicable, its decision that the tolling statute was unconstitutional should still be retroactive. SA-8 - SA-15. The court held that the first *Chevron* criterion was not satisfied in this case, because the statutory ruling in *Coons I* that the tolling statute required registration "was not a clear break with past law," but instead "decided questions as to which there had been confusion and controversy." SA-10. Pet. at 19-23; Petitioner's Reply Br. at 6-7. The second *Chevron* criterion—whether retrospective operation will further or retard the purpose of the rule in question—was also not met, the court decided, since prospectivity would "defeat[]" the purpose of the Commerce Clause holding. SA-10. Pet. at 23; Petitioner's Reply Br. at 6. As to the third criterion, which is general equitable considerations, the court ruled that these considerations also supported retroactivity. Although the case presented a "tragic situation," it was one that the plaintiffs "could readily have avoided" by commencing their action within the statutory limitations period, and "the marginal equities in this case do not compel the conclusion that implementation of important constitutional principles should be deferred." SA-10 - SA-15. Pet. at 24. Thus, the court concluded, retro-

activity of the Commerce Clause ruling was dictated even under a balancing test.

Finally, the court noted that, as pointed out by the *Coons II* dissenters and the petition, even an otherwise wholly prospective decision should benefit those responsible for changing the law, and that Searle "was among those" who secured the overruling of the tolling statute. SA-14. Pet. at 25-26; Petitioner's Reply Br. at 9-10. For this reason, as well as all the others, the court ruled that Searle's motion for summary judgment on the statute of limitations should be granted. SA-15.

2. *The Additional Conflict Searle Creates.* The decision in *Searle* means that *Coons II* is in conflict not only with other state courts of last resort (Pet. at 10-12), but also with at least one federal district court in New Jersey. In addition, the two New Jersey federal district courts to consider the retroactivity issue—*Searle* and *Hopkins* v. *Kelsey-Hayes, Inc.*, No. 78-1646 (D.N.J. June 21, 1984) (Pet. at 7 n.5)—have reached opposite conclusions. These conflicts illustrate that the lower courts are in disagreement over whether state or federal law should govern the retroactivity of a constitutional ruling, and over the correct result in the circumstances of this case under the applicable retroactivity law. These questions are thus appropriate for this Court's review. As the petition points out, there are hundreds of cases pending in New Jersey state and federal courts which would be affected by a decision by this Court in this case, and the litigants in those cases need a clear ruling. Pet. at 17; Petitioner's Reply Br. at 8-9.[2] In these circum-

[2] Without a ruling by this court in *Coons II*, the conflicts in the lower courts may create peculiar results, as illustrated by the situation facing Brinco Mining Limited, an *amicus* before the New Jersey Supreme Court in *Coons I* and *Coons II*. The petition notes (at 17 & n.12) that there are approximately six hundred products liability claims pending against Brinco in New Jersey; one hundred of these claims are pending in diversity jurisdiction in fed-

stances, there is a compelling need for the Court to grant the present petition.

CONCLUSION

In sum, the recent district court opinion in *Searle* provides additional support for the petition in two ways. *Searle* shows that, for the reasons stated in the petition, *Coons II* is wrong on the merits. The decision also demonstrates that *Coons II* is in conflict not only with other state courts of last resort, but also with at least one federal district court in New Jersey. For these additional reasons, as well as for those already stated in the petition and in petitioner's reply brief, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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eral court, and the other five hundred are pending in New Jersey state court. If *Coons II* is not reviewed by this Court, Brinco will not have a statute of limitations defense in any of the pending state court actions, or in new cases filed in state court for the next two to six years. Brinco may, however, be able to assert a limitations defense in some or all of the pending and future cases filed against it in federal court in New Jersey. Apart from the difference in forum, the cases pending against Brinco in state and federal court in New Jersey are essentially identical.